IN THE

SUPREME COURT OF THE UNITED STATES

L. S. LEE, LEONARD SURRENCY, W. L. CREECH, M. G. LEWIS, ROBERT A. ST. DENNIS, FRED POPPELL, W. E. JONES and MYRON PHILLIPS.

Plaintiffs in Certiorari

versus

CITY OF JESUP

Defendant in Certiorari

Case No._____

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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L. S. LEE, ET AL pray that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia in the above stated case rendered on September 22, 1966, a copy of said opinion being appended hereto as Exhibit "A".

The jurisdiction of this court is invoked under 28 U. S. C. 1257 (3) since the validity of state statutes on grounds of repugnancy to the Constitution of the United States is drawn in question.

The questions presented are whether the Georgia statutes and the decision in conformity therewith amount to a taking of property without due process of law in that the decision of the Supreme Court of Georgia upholds the right of municipalities without the consent of the governed to incorporate their property into the municipal limits of a municipality and although the statute of the Legislature hereinafter set out pro-

vides for an election, the minority group has no possible chance and would violate the rule of one person, one vote.

Section 1 of Amendment XIV of the Constitution of the United States provides:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

That the provisions of Section 69-1008 of the Annotated Code of Georgia provide that such elections should be held with the voters voting separately and upon a petition of thirty percent (30%) of the qualified voters in the territory proposed to be annexed or upon receipt of a petition signed by thirty percent (30%) of the qualified voters in the municipality, that the majority of the voters in both segments, the proposed and the territory to be annexed to be in the affirmative by both classes of voters, but the Acts of the Legislature of 1936, Act Number 354, approved March 4, 1966, a copy being attached hereto as Exhibit "B", only provides an election wherein the composite vote of the voters of both the annexing area and the proposed annexed area vote together, instead of under the law as it exists under the general statutes that they vote separately and that the voters in both areas have to vote in the affirmative.

Chapter 2-401 of the Annotated Code of Georgia provides:

"Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in

any case for which provision has been made by an existing general law."

Chapter 2-402 of the Annotated Code of Georgia provides: "Legislative acts in violation of the Constitution of Georgia or the Constitution of the United States are void and the judiciary shall so declare them."

Chapter 2-103 of the Constitution of Georgia provides that no person shall be deprived of life, liberty or property without due process of law.

Petitioners show that with the exception of one petitioner, that all live outside of the corporate limits of the City of Jesup and the voting population of Jesup is approximately 1,945 and the voting population of the area to be incorporated by the Act of the Legislature is approximately 200 or 300, but the statute adopted by the Legislature, although it provided for a referendum, provided that the vote should be polled together and counted together, with the result that Jesup had seven times as much voting power as the section to be incorporated so that when the vote was taken it was 1,083 for and 603 against and said property was incorporated, which is a violation of the Fourteenth Amendment of the Constitution of the United States and also the decisions of the Supreme Court that for one person there should only be one vote. That in order to circumvent the general laws of Georgia, as aforesaid, the Legislature adopted the local act set out as part of the record, authorizing an election where instead of voting separately, the voters voted in one combined vote, depriving petitioners of their rights and diluting their votes.

Immediately after said election, petitioners filed their petition in the Superior Court of Wayne County, Georgia, in which

Jesup is located, and upon it being decided, carried the same to the Supreme Court of Georgia where their application was denied. From the ruling of the Supreme Court of Georgia, they did on the 19th day of October, 1966, serve notice on the Supreme Court of Georgia of their intention to apply to this Honorable Court for a writ of certiorari and are hereby incorporating herein, by reference thereto, the record in said case. The time of filing said petition for writ of certiorari, to-wit, December 21, 1966, was extended by Mr. Justice Brennan until February 19, 1967.

In its enumeration of errors to the Supreme Court of Georgia, petitioners contended that said action on the part of the court and the state local statute in reference thereto was invalid and void. The decision of the Supreme Court of Georgia is contrary to the decisions of this court. The decision of the Supreme Court of Georgia is contrary to the decision of one vote for one person. The decision of the Supreme Court of Georgia as to the rights of due process according to the provisions of the Fourteenth Amendment is contrary to said Fourteenth Amendment. The question involved is of national importance and there have been no decisions on the precise question that petitioners have been able to find. That they are without adequate remedy at law and unless said statute is declared invalid and set aside they will be subjected to taxes by the City of Jesup and to municipal regulations which heretofore they have not been burdened with.

That the imposition of taxes by the City of Jesup has already begun, which will be burdensome to them as their lands are farming and grazing lands and without revenue and will deplete and diminish the value of said lands.

The Supreme Court of the United States has jurisdiction of this under the provisions of Sections 1257 and 2101 of 28 U. S. C.

STATEMENT OF POINTS

1. That while the Legislature has powers to amend the charters of municipalities, same must be done within the limits of the Constitution both of Georgia and of the United States, which was not followed in this case.

2. That the Act was a taking of the property and rights of the appellants in violation of the Constitution of the State of Georgia and the Fourteenth Amendment of the Constitution of the United States.

3. That it violated the rule of the Supreme Court of one person, one vote.

4. That the State statute referred to in this case was invalid and void for the reason that it undertook to circumvent the general laws of Georgia and operated to dilute the rights of the citizens in the affected area being annexed.

WHEREFORE PETITIONERS PRAY that a writ of certiorari issue under seal of court directed to the Supreme Court of Georgia and that said case may be reviewed and determined by this court and that your petitioners have such other and further remedies as this court may deem meet and proper, and that the Supreme Court of Georgia may be reversed by this Honorable Court.

Respectfully submitted,

AARON KRAVITCH
Attorney for Plaintiffs in
Certiorari

Post Office Box 593
Savannah, Georgia

EXHIBIT "A"

IN THE SUPREME COURT OF GEORGIA

Decided September 22, 1966

23679. LEE et al. v. THE CITY OF JESUP. 405.

MOBLEY, Justice. Petitioners, as taxpayers and residents of the City of Jesup and of the territory affected by the Act in question, filed their petition to have declared unconstitutional and void a special act amending the Charter of the City of Jesup and extending the corporate limits of the City to annex a small tract of land contiguous to the City of Jesup, and to enjoin the enforcement of said Act. An election had been held pursuant to the Act in which a majority of the combined votes of the voters in the City and in the area to be annexed voted in favor of the annexation. Petitioners allege that there are already in existence general laws of Georgia, which provide for annexation of contiguous territory to cities by a majority vote of the voters in the city and in the area to be annexed, counted separately, so that those in the area may have a voice in the matter. It is alleged that the Act in question violates Article I, Section IV, Paragraph I of the Constitution of Georgia (*Ga. Code* § 2-401) which provides: "Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law. No general law affecting private rights, shall be varied in any particular case, by special legislation, except with the free consent, in writing, of all persons to be affected thereby; and no person under legal disability to contract, is capable of such consent . . ." in that the Act is contrary

to general laws, including the Home Rule Act of 1965 (Ga. L. 1965, p. 298); Article I, Section I, Paragraph III of the Constitution of Georgia (Ga. Code § 2-103) which provides for due process of law, and the due process clause of the 14th Amendment of the United States Constitution, in that petitioners would be compelled to pay taxes and submit to the ordinances of the City of Jesup without having had their constitutional right to express their view on the matter of annexation of the area in question.

Defendant, the City of Jesup, filed a general demurrer to the petition. The trial court sustained the demurrer and dismissed the petition. The appeal is from this judgment. *Held:*

1. The existence of prior statutes permitting the enlargement of boundaries does not deprive the General Assembly of the power to alter and extend municipal boundaries without the consent of the persons affected thereby. *Toney* v. *Mayor &c of Macon,* 119 Ga. 83 (1) (46 SE 80); *White* v. *City of Atlanta,* 134 Ga. 532 (5) (68 SE 103); *Murray* v. *City of Waycross,* 171 Ga. 484 (4) (156 SE 38). The authority to create and alter municipal systems of government is vested in the legislature by the Constitution of Georgia. *Phillips* v. *City of Atlanta,* 210 Ga. 72 (SS SE2nd 723); Article III, Section I, Paragraph I (*Ga. Code* § 2-1301) and Article XV, Section I, Paragraph I (*Ga. Code* § 2-8301) of the Constitution of Georgia. Contrary to the contention of the appellant, the Home Rule Act of 1965 does not provide the sole method by which the General Assembly may amend a city charter so as to change the city boundaries. Section 2 of the Home Rule Act of 1965 provides: "No municipality shall be incorporated, dissolved, merged or consolidated with any other municipality or municipal boundaries changed, *except by local act of the General*

Assembly or by such methods as may be provided by general law." (Ga. L. 1965, pp. 298, 299). (Underscoring ours). Thus, the General Assembly has retained the power to change municipal boundaries, and to do so by special act. The act here is a valid exercise of authority by the General Assembly.

2. An act extending municipal boundaries does not violate the constitutional guarantee of due process of the law because it subjects property owners in the area annexed to taxation by the municipality, *Schneider* v. *City of Folkston*, 207 Ga. 434 (2) (62 SE2d 177); nor does it deny to such property owners equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States. *Smith* v. *Mayor &c of Macon*, 129 Ga. 227 (2) (58 SE 713).

Judgment Affirmed. All the Justices Concur.

EXHIBIT "B"

H. B. No. 738

By: Mr. Thomas of the 77th

A BILL

To be entitled an Act to amend an Act incorporating and creating a new charter for the City of Jesup in Wayne County, Georgia, approved December 15, 1937 (Ga. Laws 1937-38 Ex. Sess., p. 1142), as amended, so as to change the corporate limits of the City of Jesup; to provide for a referendum; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1

An Act incorporating and creating a new charter for the City of Jesup in Wayne County, Georgia, approved December 15, 1937 (Ga. Laws 1937-38 Ex. Sess., p. 1142), as amended, is hereby amended by striking Section 2 in its entirety and substituting in lieu thereof a new Section 2 to read as follows:

"Section 2. The corporate limits of the City of Jesup shall extend to and embrace all of the following described territory, to-wit:

"Beginning at a point located north 46° 30′ West a distance of 9,280.0 feet from the point of intersection of the center of Cherry Street and the center of the main line track of the Atlantic Coast Line Railroad in said city; thence North 43° 30′ East a distance of 9,280.0 feet; thence South 46° 30′ East a distance of 18,560 feet; thence South 43° 30′ West a distance of

23,560.0 feet; thence North 46° 30′ East a distance of 18,560.0 feet; thence North 43° 30′ East a distance of 14,280 feet to the point of beginning."

SECTION 2

Not earlier than March 20, 1966, nor later than April 20, 1966, it shall be the duty of the Ordinary of Wayne County to issue the call for an election for the purpose of submitting this Act to the voters of Wayne County who reside in the area proposed to be annexed to the City of Jesup by this Act and to the voters of Wayne County who reside in the City of Jesup for approval or rejection. The Ordinary shall set the date of such election for May 25, 1966, and shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of Wayne County. The ballot shall have written or printed thereon the words:

"For approval of the Act expanding the corporate limits of the City of Jesup.

"Against approval of the Act expanding the corporate limits of the City of Jesup."

All persons desiring to vote in favor of the Act shall vote for approval and those persons desiring to vote for rejection of the Act shall vote against approval. The votes cast in said election in the area of Wayne County proposed to be annexed to the City of Jesup, and the votes cast in said election in the City of Jesup shall be combined and consolidated, and if more than one-half of the votes cast on such question are for approval of the Act, it shall become of full force and effect, otherwise it shall be void and of no force and effect. The expense of such election shall be borne by the City of Jesup. It shall be

the duty of the Ordinary to hold and conduct such election. He shall hold such election under the same laws and rules and regulations as govern general elections, except as otherwise provided herein. It shall be the duty of the Ordinary to canvass the returns and declare and certify the result of the election. It shall be his further duty to certify the result thereof to the Secretary of State.

SECTION 3

All laws and parts of laws in conflict with this Act are hereby repealed.

NOTICE OF INTENTION TO INTRODUCE LOCAL LEGISLATION

Notice is hereby given that there will be introduced at the January, 1966 Session of the General Assembly of Georgia, a bill to change the corporate limits of the City of Jesup; to provide for a referendum; and for other purposes.

This 18th day of January, 1966.

GLENN THOMAS, JR., REPRESENTATIVE
77TH DISTRICT — WAYNE COUNTY, GEORGIA

ROSCOE DEAN, JR., SENATOR
6TH DISTRICT
January 20, 27 - February 3

GEORGIA, FULTON COUNTY

Personally appeared before me, the undersigned authority, duly authorized to administer oaths, Honorable Glenn Thomas,

Jr., who, on oath, deposes and says that he is Representative from the 77th District, and that the attached copy of Notice of Intention to Introduce Local Legislation was published in the Jesup Sentinel, which is the official organ of Wayne County, on the following dates: January 20, 27 & February 3, 1966.

GLENN THOMAS, JR.
Representative, 77th District

Sworn to and subscribed before me
this 7th day of February, 1966.

BARBARA SPRATLING (SEAL)
Notary Public, Georgia State at Large.
My Commission Expires Jan. 2, 1970.

Approved March 4, 1966 as Act No. 354.

PLAINTIFFS' SUPPLEMENTAL COMMENTS

No brief is being attached or submitted in connection with said petition for the reason that plaintiffs believe that this is covered clearly by the constitutional provisions of the Fourteenth Amendment, which provides that neither person nor property shall be taken without due process of law and also that there shall be equal protection of the law.

While it is true that the Legislature has the broad powers to amend the charters of municipalities, this must be done within the limitations of the Constitution, both of Georgia and of the United States, and to provide for a referendum and then take this right away is an empty gesture and is a violation of constitutional rights. It would be just like as if the City of Washington were to intend to incorporate into itself a portion of Arlington and then to show their big-heartedness, the District of Columbia were to provide for a referendum in which all persons would vote and a majority would prevail, the right is given to the people of Georgetown to have an expression on the one hand, but this is an empty right on the other.

It had been the custom in Georgia for many, many years and as provided by law that the citizens of each community affected were to have the right to vote and that annexation would require the affirmative vote of the majority of citizens of both places and not the affirmative combined vote. See Georgia Acts 1966, page 409.

It is conceded that the Legislature has the right to alter the boundaries of a city (See United States vs. Steuart, 47 F. 2d 979), but this has to be done within constitutional limitations. Where the right to vote is given, it must be given properly. As an extreme illustration, the State of Georgia has the right to punish for a crime, but it would be unlawful for it to make simple larceny a capital offense.

STATE OF GEORGIA
COUNTY OF CHATHAM

AARON KRAVITCH, being first duly sworn on oath, says that he is of counsel for plaintiffs in certiorari; that he verily believes that important and heretofore undecided questions are involved in said case and that a question of sufficient importance is made on constitutional grounds which will justify the granting of a certiorari by the Supreme Court of the United States. That said application is being filed in good faith and not for the purposes of delay, but because counsel believes that petitioners have good cause for the filing of the same.

This 18th day of February, 1967.

AARON KRAVITCH

Sworn to and subscribed before me
this 18th day of February, 1967.
LOXIE T. LAMAR (SEAL)
Notary Public, Chatham County, Georgia

CERTIFICATE OF SERVICE

This is to certify that we have this date served a copy of the foregoing petition for writ of certiorari upon the defendant in certiorari by placing a copy of the same in the United States Mail, with sufficient postage affixed and addressed to:

Mr. William A. Zorn
Zorn & Royal
Attorneys at Law
292 East Cherry Street
Jesup, Georgia 31545

This 18th day of February, 1967.

AARON KRAVITCH
Attorney for Plaintiffs in
Certiorari